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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/516,850

06/23/2005

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50576-2400

7209

21611 7590 06/05/2008
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EXAMINER

MUROMOTO JR, ROBERT H

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

06/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/516,850	Applicant(s) ZORICA, ALISTAIR	
	Examiner BOBBY H. MUROMOTO JR	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/1/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 29 recites 'cutting a second panel' but refers to claim 28 that already has 'cutting a second panel', the term 'second panel' in claim 29 has no clear antecedent basis.

Claim 29 is examined as 'cutting a third panel'.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 6, 10, 15, 16, 18, 19, 23, 24, and 26-28 rejected under 35 U.S.C. 102(b) as being anticipated by O'Neill US 3731319.

'319 discloses a 'combination wetsuit/drysuit for surfing, diving, sailing, marine survival and the like is provided wherein the suit is provided with tight inturned seals at the neck, ankles, and wrists so that it is substantially water tight (abstract).'

'319 clearly discloses a 'fitted garment' that is a 'wetsuit' as claimed.

'319 discloses a first panel (13,15) as seen in figure 1, that has a torso region 'substantially surrounding the waist' and having upper portions 'configured' to 'extend' towards an under arm region, as claimed. Figure 1 clearly shows one panel construction and no seams in the armpit region as claimed.

The first panel clearly has leg portions (13, 15) shown in figure 1.

'319 discloses a second panel 11 that is arranged as in claim 5 and 28.

'319 discloses in figure 1, leg darts, having inner knee seams which 'terminate at an outside calf region', as claimed.

The wetsuit clearly has no underarm gussets as claimed.

Figure 1 clearly shows the torso of the suit made up of less than 5 panels as claimed.

The methods in claims 26 and 27 are clearly disclosed in the citations above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4, 7-9, 11-14, 20-22, 25 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over '319.

Although '319 has explicitly disclosed essentially all of the limitations of the instant invention, '319 has not explicitly taught the limitations in instantly cited claims drawn to specific panel location and seaming arrangement (Claims 3, 4, 7-9, 11-14, 25 and 29), and seam length (claims 20-22).

However, '319 has taught, 'the suit is formed with arm portions 7 and 9, fastened to a body portion 11 and leg portions 13 and 15. **The suit can be formed from various pattern pieces as shown. The curved seam 14 is designed in such a matter to make it improbable that a strain will be placed directly on the seam. Also, since all seams are stiff, this curve design allows greater elongation by the fact that when tension is put on a curve seam, there is greater flexibility than if it is a straight seam. The sections are joined by means well known to those skilled in the art such as cementing or sewing or, preferably, a combination of both sewing and cementing.**"

Additionally, garment pattern design variation is a well-known and widely practiced technique, as evidenced by '319 teaching above and numerous garment patterning references attached in PTO-892. All garment patterns are designed with various panels depending on the various needs of the end use garment.

Therefore it would have been obvious to one of ordinary skill in the art of garment production to use various garment pattern pieces, that result in various panel and

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seaming locations for the finished garment to produce a garment that reduces direct strain on the seams.

With respect to the exact seam length, the obvious variation above applies as well as that with respect to changes in size and proportion the MPEP states:

Changes in Size/Proportion

In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955) (Claims directed to a lumber package "of appreciable size and weight requiring handling by a lift truck" where held unpatentable over prior art lumber packages which could be lifted by hand because limitations relating to the size of the package were not sufficient to patentably distinguish over the prior art.); *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976) ("mere scaling up of a prior art process capable of being scaled up, if such were the case, would not establish patentability in a claim to an old process so scaled." 531 F.2d at 1053, 189 USPQ at 148.).

In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Since the only difference between the prior art and the claimed device is the recitation of relative dimension of the seam length total, and the prior art device clearly teaches seam and pattern design to decrease stress on the seam like the claimed invention, the claimed invention is not patentably distinct and therefore would have been obvious to one of ordinary skill in the art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BOBBY H. MUROMOTO JR whose telephone number is (571)272-4991. The examiner can normally be reached on 8-530, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert H Muromoto, Jr./
Primary Examiner, Art Unit 3765